



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2022-0434; FRL-9821-02-OAR]

RIN 2060-AV72

Renewable Fuel Standard (RFS) Program: Alternative RIN Retirement Schedule for Small Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing an optional alternative renewable identification number (RIN) retirement schedule for small refineries under the Renewable Fuel Standard (RFS) program for the 2020 compliance year. Small refineries that elect to use the alternative RIN retirement schedule will have to fully comply with their 2020 RFS obligations—including any RIN deficits from 2019 carried forward into the 2020 compliance year—by February 1, 2024. EPA is taking this action because small refineries may need more time to plan for compliance with their RFS obligations given EPA’s delay in deciding small refinery exemption (SRE) petitions and setting the associated compliance deadlines.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2022-0434. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Robert Anderson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4280; email address: *anderson.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

Dates.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect until 30 days after they are published in the *Federal Register*. EPA is issuing this final rule under section 307(d) of the Clean Air Act (CAA or “the Act”), which states, “The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.” Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this final rule effective upon publication. The purpose of this APA provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.”¹ However, when an agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Thus, APA section 553(d) allows an effective date less than 30 days after publication for any rule that “grants or recognizes an exemption or relieves a restriction.”² An accelerated effective date may also be appropriate for good cause pursuant to APA section 553(d)(3) where an agency can “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.”³

¹ *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

² See 5 U.S.C. 553(d)(1).

³ *Gavrilovic*, 551 F.2d at 1105.

EPA has determined that the regulatory amendments to 40 CFR part 80, subpart M, are effective upon publication in the *Federal Register* because they relieve a restriction by providing small refineries with an alternative schedule for retiring RINs toward their 2020 renewable volume obligations (RVOs), thereby providing small refineries with additional time to demonstrate compliance. There is additionally good cause for implementation of these provisions upon publication because it will ensure that the provisions are effective prior to the 2020 RFS compliance deadline (December 1, 2022), which is the point at which small refineries intending to utilize the alternative RIN retirement schedule provided in this action will need to notify EPA. Any delay in effectiveness could cause uncertainty regarding its availability.

Does this action apply to me?

Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline, diesel, and renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

| Category | NAICS ¹ Code | Examples of Potentially Affected Entities |
|----------|-------------------------|---|
| Industry | 324110 | Petroleum refineries |
| Industry | 325193 | Ethyl alcohol manufacturing |
| Industry | 325199 | Other basic organic chemical manufacturing |
| Industry | 424690 | Chemical and allied products merchant wholesalers |
| Industry | 424710 | Petroleum bulk stations and terminals |
| Industry | 424720 | Petroleum and petroleum products merchant wholesalers |
| Industry | 221210 | Manufactured gas production and distribution |
| Industry | 454319 | Other fuel dealers |

¹ North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
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I. Background

The RFS program sets annual, nationally applicable volume targets for renewable fuel. EPA translates those volume targets into compliance obligations that obligated parties must meet each year. EPA has designated refiners and importers of gasoline and diesel fuel used as transportation fuel to be those obligated parties.⁴ Small refineries, a subset of refiners, are defined by the Act as “refiner[ies] for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels.”⁵ At the start of the RFS program, Congress initially granted all eligible small refineries a temporary exemption from the obligations of the RFS program until 2011.⁶ Under EPA’s regulations, small refineries that were producing either “gasoline” under RFS1⁷ or “transportation fuel” under RFS2⁸ were required to notify EPA that they qualified for the temporary exemption by submitting verification letters stating their average

⁴ 40 CFR 80.1406(a).

⁵ CAA section 211(o)(1)(K).

⁶ CAA section 211(o)(9)(A)(i).

⁷ 72 FR 23900, 23926 (May 1, 2007).

⁸ 40 CFR 80.1441(a)(1).

crude oil throughput rate during the applicable qualification period.⁹ The CAA provides that a small refinery may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).¹⁰ In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.¹¹

On December 7, 2021, EPA proposed to deny 65 pending SRE petitions for the 2016–2021 compliance years¹² and took public comment via a *Federal Register* notification.¹³ That proposal included proposed changes to EPA’s interpretation of the SRE provisions in the CAA that were informed by the holdings of the U.S. Court of Appeals for the Tenth Circuit in *Renewable Fuels Association et al. v. EPA (RFA)*¹⁴ and EPA’s long-held findings regarding RFS compliance costs being passed through ultimately to wholesale purchasers (generally referred to as RIN cost passthrough). Consistent with that proposal, on April 7, 2022, EPA announced the April 2022 SRE Denial,¹⁵ which denied 36 previously-decided SRE petitions for the 2018 compliance year that had been remanded to EPA for reconsideration by the U.S. Court of Appeals for the D.C. Circuit.¹⁶ Then, on June 3, 2022, EPA announced the June 2022 SRE

⁹ 72 FR 23900, 23925–26 (May 1, 2007); 40 CFR 80.1441(b). EPA’s regulations allowed small refineries that had submitted verification letters to qualify for the original statutory exemption under EPCA/RFS1 to not have to submit an additional verification letter to qualify under the SRE provisions in EISA/RFS2.

¹⁰ CAA section 211(o)(9)(B)(i).

¹¹ CAA section 211(o)(9)(B)(ii).

¹² “Proposed RFS Small Refinery Exemption Decision,” EPA-420-D-21-001, December 2021.

¹³ 86 FR 70999 (December 14, 2021).

¹⁴ *Renewable Fuels Ass’n et al. v. EPA*, 948 F.3d 1206 (10th Cir. 2020). The court held that (1) the disproportionate economic hardship required in order to receive an SRE under the CAA must be caused by RFS compliance, (2) EPA acted arbitrarily and capriciously when it granted the SREs at issue without reconciling those decisions with the Agency’s previous findings on RIN cost passthrough, and (3) “extension” as used in the CAA SRE provisions required continuity, such that small refineries were only eligible for SREs if they had been continuously exempted from the outset of the RFS program. On September 4, 2020, the small refineries filed a petition for a writ of certiorari from the Supreme Court requesting review only of the holding regarding the meaning of “extension,” which was granted on January 8, 2021, and following oral argument, was decided on June 25, 2021, in *HollyFrontier Cheyenne Refining, LLC et al. v. Renewable Fuels Ass’n et al.*, 114 S.Ct. 2172 (2021) (*HollyFrontier*). The Supreme Court held in *HollyFrontier* that “extension” as used in the SRE provisions of the CAA does not require continuous exemption. The other holdings in *RFA* were not appealed.

¹⁵ “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-005, April 2022.

¹⁶ *Sinclair Wyoming Refining Co. v. EPA*, No. 19-1196 (D.C. Cir.), Dec. 8, 2021 Order, Doc. No. 1925942.

Denial,¹⁷ which denied 69 SRE petitions for the 2016–2021 compliance years that were still pending.¹⁸ On that same day, EPA also announced and sought comment on this alternative RIN retirement schedule.

II. Small Refineries and RFS Compliance

A. Unique Small Refinery Compliance Challenges

We understand that some small refineries that recently had their 2019 and 2020 SRE petitions denied may not be prepared to comply with their renewable volume obligations (RVOs or “RFS obligations”) for the 2020 compliance year by the applicable compliance deadlines, likely because they received SREs in recent years and assumed they would continue. Additionally, the 2019, 2020, and 2021 compliance deadlines have been compressed¹⁹ and some small refineries have stated that they have been unable to acquire the RINs they need to comply with their RFS obligations.²⁰ For these reasons, EPA believes it is appropriate to allow all small refineries—including those that carried forward a 2019 RIN deficit into the 2020 compliance year pursuant to 40 CFR 80.1427(b)—to elect to use the alternative RIN retirement schedule described in Section III to meet their 2020 RFS obligations. This will give small refineries additional time and open a broader range of RIN vintages to acquire and retire the RINs needed to demonstrate compliance for the 2020 compliance year.

Several commenters supported EPA’s proposed alternative RIN retirement schedule. However, other commenters stated that the alternative RIN retirement schedule for small refineries is unnecessary, that a small refinery’s decision to postpone its RIN purchases is not an adequate reason for providing this additional flexibility, and that EPA should explicitly limit the

¹⁷ “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-011, June 2022.

¹⁸ More information about SREs is available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>.

¹⁹ The RFS regulations establish deadlines for obligated parties—including small refineries—to comply with their annual RVOs; the deadlines provide the dates by which obligated parties must retire sufficient RINs to comply with those RVOs and submit associated compliance reports. The 2019 compliance deadline for small refineries is September 1, 2022; the 2020 compliance deadline for all obligated parties is December 1, 2022; and the 2021 compliance deadline for all obligated parties is March 31, 2023.

²⁰ See, e.g., Comments on 2020-2022 RFS Rule from the Small Refinery Coalition, Docket Item No. EPA-HQ-OAR-2021-0324-0570.

alternative RIN retirement schedule to only the 2020 compliance year. These commenters asserted that small refineries were put on notice regarding the uncertainty of their 2019 and 2020 SRE petitions by the *RFA* opinion, then notified again in December 2021 when EPA proposed to deny 65 pending SRE petitions. Thus, the commenters argued, small refineries had ample awareness of EPA’s SRE petition evaluation criteria such that they should have had no reasonable expectation of receiving exemptions, given the high burden of demonstrating that EPA’s RIN cost passthrough findings do not apply to them. Furthermore, they argued, small refineries had ample opportunity to begin planning and preparing for RFS compliance and should not again postpone their compliance planning and preparation. These commenters also asserted that EPA already provided significant support to small refineries by retroactively lowering the 2020 volumes, extending the 2019, 2020, 2021, and 2022 compliance deadlines, and issuing the April 2022 and June 2022 Compliance Actions (hereinafter the “Compliance Actions”),²¹ thereby negating the need for the alternative RIN retirement schedule.

We generally agree that compliance should not be indefinitely postponed for any obligated party—including small refineries—and that small refineries should plan for compliance and not delay their RIN purchases. However, this is not EPA’s sole justification for this action. Instead, we aim to avoid having small refineries fall into noncompliance due to their expectation that EPA would continue to grant SREs, largely because such noncompliance would exacerbate existing uncertainty in the RIN market. The goal of the alternative RIN retirement schedule is not to provide small refineries with a means of avoiding compliance with their RFS obligations, but rather to support small refineries in their transition into positions where they will be able to comply with their RVOs on an ongoing basis. This will also ensure the use of renewable fuels in the U.S. as required by the RFS program and help provide certainty in the

²¹ “April 2022 Alternative Compliance Demonstration Approach for Certain Small Refineries Under the Renewable Fuel Standard Program,” EPA-420-R-22-006, April 2022; and “June 2022 Alternative Compliance Demonstration Approach for Certain Small Refineries Under the Renewable Fuel Standard Program,” EPA-420-R-22-012, June 2022.

RFS program and fuels markets given the unique circumstances as a result of our June 2022 actions. While we agree that small refineries were given some notice regarding the importance of RIN cost passthrough in our evaluation of SRE petitions by the *RFA* opinion and the likelihood that it would affect their ability to continue receiving annual SREs, that awareness does not resolve the consequences of the challenges facing small refineries, including the current limitations on RIN availability and the resulting impact on the RFS program and the fuels markets in general. Additionally, we did not propose, nor are we finalizing, an extension of the alternative RIN retirement schedule beyond the 2020 compliance year.

B. Overview of Compliance Approach

For the reasons provided herein, we are providing an alternative RIN retirement schedule to small refineries for the 2020 compliance year to facilitate their transition into full compliance with the RFS program. This alternative RIN retirement schedule will decrease the number of RINs that small refineries must acquire in the near term, extend the time period over which small refineries can plan and implement their RIN transactions, and allow the use of RINs generated in future compliance years, thereby reducing the immediate financial impacts on small refineries, and in so doing the impacts on the RIN market and the RFS program as a whole within the broader fuels market.

Some commenters asserted that the alternative RIN retirement schedule would harm the RFS program and lead to increased uncertainty in the RIN market. The commenters stated that the market would not know how small refineries would choose to comply—whether by the 2020 compliance deadline or using the alternative RIN retirement schedule—and that this would undermine reliability and predictability in the RIN market. We disagree with these assertions. The alternative RIN retirement schedule aims to bring small refineries into a routine of complying with their RVOs, thereby restoring predictability and reliability in the RIN market while moderating the immediate impacts on the RFS program and fuels markets. While the alternative RIN retirement schedule may result in some limited uncertainty in the RIN market,

we believe it is outweighed by the benefit of increasing the likelihood that small refineries will be able to comply with their 2020 obligations and that any such uncertainty can be reduced by providing greater transparency on the utilization of the alternative RIN retirement schedule. Therefore, we intend to post information and aggregated data related to the alternative RIN retirement schedule on the RFS SRE website.²² Such information may include the number of small refineries that opt-in to the alternative RIN retirement schedule, the refinery names and facility locations,²³ and the total portion of the 2020 RVO that small refineries are complying with using the alternative RIN retirement schedule. We believe that posting this information will provide necessary transparency as to the size and scope of the impact of the alternative RIN retirement schedule.

We are allowing any refinery that meets the definition of “small refinery”²⁴ for the 2020 compliance year to use this alternative RIN retirement schedule, regardless of whether it submitted an SRE petition for 2020 or recently received an SRE denial. Almost all small refineries submitted an SRE petition for 2020 that was denied in the June 2022 SRE Denial. We further believe that the alternative RIN retirement schedule should be provided to all small refineries because the previous uncertainty surrounding the availability of SREs potentially affected all small refineries, which “may at any time petition” for an SRE.²⁵

Several commenters highlighted that the proposed regulations were inconsistent with EPA’s stated intent in the preamble of the proposed rule to allow all small refineries to use the proposed alternative RIN retirement schedule. The proposed regulations, they noted, stated that a small refinery must meet the requirements of 40 CFR 80.1441(e)(2)(iii) in order to avail itself of the alternative RIN retirement schedule. The commenters stated that there is a distinction between meeting the requirements of the definition of “small refinery” in 40 CFR 80.1401 and

²² See <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions>.

²³ 40 CFR 80.1402(c).

²⁴ CAA section 211(o)(1)(K), 40 CFR 80.1401.

²⁵ CAA section 211(o)(9)(B)(i).

qualifying for an SRE under 40 CFR 80.1441(e)(2)(iii).²⁶ We agree and have clarified the final regulations to reflect that a small refinery must meet the definition of “small refinery” in 40 CFR 80.1401 in the applicable compliance year (i.e., 2020) in order to elect to use the alternative RIN retirement schedule.

We did not receive any comments objecting to limiting the alternative RIN retirement schedule for 2020 to only small refineries and, therefore, are finalizing it as proposed. However, one commenter stated that EPA’s prior action to retroactively reduce the 2020 standards to preserve the carryover RIN bank and ensure that sufficient RINs were available for 2020 compliance made the proposed alternative RIN retirement schedule unnecessary. We disagree with this assertion and believe that it is appropriate to provide this alternative RIN retirement schedule for small refineries for their 2020 RFS obligations because it responds to their unique circumstances at this time. Some small refineries have stated that they have not been acquiring RINs ratably while producing transportation fuels that incur an RFS obligation in anticipation of EPA granting their SRE petitions as it had in past years, a result that did not manifest.²⁷ Currently, the available RINs²⁸ small refineries need for compliance with their 2020 RVOs are being held in large part by other obligated parties that likely intend to use these RINs for compliance with their own RFS obligations, and those parties may not be willing to sell them.²⁹

²⁶ The definition of “small refinery” in 40 CFR 80.1401 requires that a refinery’s average aggregate daily crude oil throughput does not exceed 75,000 bpd for a given year. The requirements of 40 CFR 80.1441(e)(2)(iii) require that a refinery meet the definition of “small refinery” for both the year in question and the year prior. For purposes of the proposed alternative RIN retirement schedule, the proposed regulations would have meant that a refinery needed to qualify as a “small refinery” for both 2019 and 2020 in order to use the alternative RIN retirement schedule.

²⁷ We note, however, that the RIN cost passthrough analysis presented in the April 2022 and June 2022 SRE Denials puts small refineries on notice regarding the high burden they bear when petitioning for an SRE to demonstrate that their alleged DEH is caused by compliance with the RFS program. Thus, absent a compelling demonstration that a small refinery experiences DEH caused by compliance with the RFS program, a small refinery should have no reasonable expectation that its SRE petition will be granted in the future and has no reason to again delay the acquisition of RINs to demonstrate compliance with its RFS obligations. This is a long-held position by EPA; for example, in its December 6, 2016, SRE guidance document, EPA stated that “[p]etitioning small refineries should always presume that they are subject to the requirements of the RFS program and include RFS compliance in their overall planning.” Accordingly, as has been true in the past, every small refinery should plan and prepare to demonstrate compliance with their RFS obligations unless and until they receive an exemption.

²⁸ “Available RINs” refers to those RINs that can be used to demonstrate compliance because they have not been retired as required under 40 CFR 80.1434.

²⁹ RIN-holding data indicates that just four obligated parties—which represented approximately 40 percent of the 2019 total RVO—currently hold over half of all available 2019 RINs, and nine obligated parties—which represent

While the revisions to the 2020 standards made it possible for them to be met by the market as a whole, those revisions did not take targeted action to assist individual compliance by small refineries. For these reasons, many small refineries may not be prepared to comply with their 2020 RVOs by the 2020 compliance deadline. Therefore, we are providing small refineries with more time to acquire RINs and allow the use of a broader range of RIN vintages through the alternative RIN retirement schedule, which we believe will help resolve some of the obstacles small refineries may currently be facing.

III. Alternative RIN Retirement Schedule for Small Refineries for the 2020 Compliance Year

The alternative RIN retirement schedule is an extended period over which small refineries must acquire and retire RINs to demonstrate compliance with their 2020 RFS obligations. The alternative RIN retirement schedule includes five quarterly RIN retirement deadlines that extend into the 2024 calendar year, thereby allowing small refineries to potentially use 2021, 2022, 2023, and 2024 RINs to satisfy a portion of their 2020 RVOs. We are providing this schedule to allow over 18 months between the June 2022 SRE Denial and the final 2020 RVO quarterly RIN retirement deadline of February 1, 2024, for small refineries to satisfy, in full, their 2020 RVOs. Table III.1 provides the alternative RIN retirement schedule and expected RIN vintages that can be used for each quarterly RIN retirement deadline, along with annual compliance reporting deadlines:

approximately 55 percent of the 2019 total RVO—hold over three-quarters of all available 2019 RINs. Similarly, just five obligated parties currently hold over half of all available 2020 and 2021 RINs, and 12 obligated parties hold over three-quarters of all available 2020 and 2021 RINs. See “EMTS RIN Holding Data as of August 1, 2022,” available in the docket for this action. RIN holdings are presented in relation to the 2019 total RVO because this is the most recent year for which EPA has compliance data.

Table III.1 – 2020 RVO Alternative RIN Retirement Schedule with Annual Compliance**Reporting Deadlines**

| Milestone | Deadline | RIN Vintage | | | | | | |
|---------------------------------------|-------------------|-------------|------|------|------|------|------|------|
| | | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
| 2019 Compliance Deadline | September 1, 2022 | C | X | | | | | |
| 2020 Compliance Deadline | December 1, 2022 | | C | X | | | | |
| 2020 RVO RIN Retirement 1 (20%) | February 1, 2023 | | | X | X | X | X | |
| 2021 Compliance Deadline | March 31, 2023 | | | C | X | | | |
| 2020 RVO RIN Retirement 2 (40%) | May 1, 2023 | | | | X | X | X | |
| 2020 RVO RIN Retirement 3 (60%) | August 1, 2023 | | | | X | X | X | |
| 2022 Compliance Deadline ^a | September 1, 2023 | | | | C | X | | |
| 2020 RVO RIN Retirement 4 (80%) | November 1, 2023 | | | | | X | X | |
| 2020 RVO RIN Retirement 5 (100%) | February 1, 2024 | | | | | X | X | X |
| 2023 Compliance Deadline ^a | March 31, 2024 | | | | | C | X | |

^a The 2022 and 2023 compliance deadlines are provided for illustrative purposes but have not yet been established.

See 40 CFR 80.1451(f)(1)(A).

X = RINs of this vintage may be used in any amount.

C = RINs of this vintage may be used to satisfy up to 20 percent of the RVO, per 40 CFR 80.1427(a)(5).

We are establishing these specific RIN retirement deadlines so that they will not overlap with other RFS compliance reporting deadlines. This approach will allow EPA staff to implement and oversee the RIN retirements more effectively and mitigate the potential for confusion on the part of participating small refineries that will have overlapping compliance reporting requirements. We are setting specific dates for these deadlines—as opposed to tying them to the effective date of this or another RFS-related action—to provide greater certainty regarding the RIN retirement deadlines under the alternative RIN retirement schedule.

We are establishing the five quarterly RIN retirement deadlines because this will allow small refineries additional time to acquire RINs, as well as provide small refineries with access to additional newer RIN vintages, as any valid RIN at the time of retirement can be used to demonstrate compliance. In this way, the alternative RIN retirement schedule strikes a balance between easing the compliance burden for small refineries while not indefinitely postponing their compliance demonstrations, thereby also supporting the integrity of the RFS program and ensuring the use of renewable fuels in the U.S. The extended RIN retirement schedule and expanded RIN vintage eligibility will help individual small refineries fully comply, and in so

doing will strengthen the entire RFS program following the recent delays in issuing SRE petition decisions for 2019 and 2020 and in establishing the RFS standards for 2021 and 2022 (and revised standards for 2020).

Several commenters stated that acquiring and retiring RINs for the 2020 compliance year over five quarterly installments would still impose too high of a compliance burden that small refineries could not bear. These commenters advocated for EPA to allow all small refineries to use the same approach to demonstrating compliance with their 2019 and 2020 RFS obligations that EPA provided to the 31 small refineries for their 2016–2018 RFS obligations in the Compliance Actions. These commenters asserted that the RIN market fundamentally disadvantages small refineries that comply by purchasing RINs, and that the extended time to purchase RINs would not remedy this situation.

We disagree that using the approach suggested by commenters is appropriate for the 2019 and 2020 compliance years. First, the unique confluence of circumstances that justified the Compliance Actions for the 31 small refineries' 2016–2018 RFS obligations does not exist for the small refineries that have unmet 2019 and 2020 RFS obligations.³⁰ In particular, EPA had not previously granted SREs for 2019 and 2020, which it then subsequently revoked, nor do we find that compliance is not feasible for small refineries for 2019 and 2020. Second, we fundamentally disagree that a small refinery is disadvantaged by needing to purchase RINs instead of being able to blend renewable fuels into their petroleum-based transportation fuels to separate RINs, as explained in the June 2022 SRE Denial. Indeed, extending the unusual remedy provided in the Compliance Actions to the 2019 and 2020 RVOs would be wholly inappropriate, as it would be contrary to the purpose of transitioning small refineries into a compliance posture and ignore the unique circumstances that warranted such an extreme compliance demonstration for the 2016–2018 RVOs, thereby exacerbating uncertainty in the RIN market. Nevertheless, we believe the

³⁰ See “April 2022 Alternative Compliance Demonstration Approach for Certain Small Refineries Under the Renewable Fuel Standard Program,” EPA-420-R-22-006, April 2022, at Section III.

alternative RIN retirement schedule for 2020 is necessary and appropriate for facilitating RFS compliance by small refineries.

Under the alternative RIN retirement schedule, a small refinery must retire at least 20 percent of its 2020 RVOs by the first quarterly RIN retirement deadline, at least 40 percent by the second quarterly RIN retirement deadline, and so on, as laid out in Table III.1, such that a small refinery's full 2020 RVOs must be met on the final RIN retirement deadline of February 1, 2024. For example, under the alternative RIN retirement schedule, if a small refinery retired RINs sufficient to meet 30 percent of its 2020 RVOs by the 2020 compliance deadline of December 1, 2022, then it would not be obligated to retire additional RINs towards its 2020 RVOs until the second quarterly RIN retirement deadline (i.e., May 1, 2023), at which time it would be obligated to retire RINs equal to at least 40 percent of its 2020 RVOs.

We are also allowing small refineries to use any valid RINs at the time of retirement for compliance, including RIN vintages after 2020 (i.e., 2021, 2022, 2023, and 2024 RINs) until such RIN vintages expire (e.g., 2021 RINs expire after the 2022 compliance deadline). This will allow small refineries access to additional RINs while maintaining compliance with the RFS regulations regarding the validity and expiration of RINs.³¹ Doing so will increase the likelihood of a small refinery satisfying its outstanding 2020 obligations and that the volume targets are fulfilled. Given the relatively small proportion of the overall demand for RINs that is represented by all small refineries (i.e., less than 10 percent of the total RVO for any given year) and that there is likely only a limited number of small refineries that will utilize the alternative RIN retirement schedule, we do not anticipate that this action will have any significant impact on the overall RIN market in future years through increased demand for future year vintages given the

³¹ 40 CFR 80.1428(a) specifies that any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered an expired RIN. Pursuant to 40 CFR 80.1431(a), an expired RIN will be considered an invalid RIN. We are not reopening these regulations, nor the regulations associated with which RIN vintages are available for compliance under 40 CFR 1427(a).

small volume of RINs likely to be used through the alternative RIN retirement schedule as compared to the larger renewable fuels market.

One commenter asserted that it is inappropriate to allow the use of RINs generated in 2023 and 2024 as part of the alternative RIN retirement schedule because EPA has not yet established the RVOs for those years. However, the commenter did not explain why the fact the EPA has not yet set the standards for 2023 and 2024 makes the use of those vintage RINs inappropriate for the alternative RIN retirement schedule. Indeed, this is an integral aspect of the alternative RIN retirement schedule as it eases current RIN supply constraints and provides small refineries with sufficient time to plan and execute their RIN purchases.

Other commenters asserted that the proposal to allow small refineries to use 2023 and 2024 RINs for compliance with their 2020 obligations under the alternative RIN retirement schedule did not go far enough to support small refineries. These commenters asserted that EPA should allow small refineries to use any 2019 or 2020 RINs they currently hold for compliance in any compliance year through 2023. One commenter further suggested that EPA could create a separate compliance category for small refineries and set their RFS obligations at the same average percentage of their RVOs based on the number of RINs the group currently holds.

We disagree that these additional flexibilities are appropriate or necessary to bring small refineries into compliance with their RFS obligations. Small refineries currently holding 2019 or 2020 RINs are encouraged to use those RINs for 2019 or 2020 compliance, such that there will be fewer RINs that they need to acquire going forward. Additionally, EPA did not propose a new methodology to create small refinery-specific RVOs and such comments overlook the fact that the RFS obligations are already proportional to an obligated party's production of gasoline and diesel fuel. Moreover, CAA section 211(o)(3)(B)(ii)(III) requires EPA to establish a single annual standard applicable to all obligated parties. The commenter did not provide any explanation as to how EPA could establish a separate annual obligation for only small refineries under the terms of CAA section 211(o)(3)(B)(ii)(III).

We are requiring small refineries to notify EPA of their intent to use the alternative RIN retirement schedule on or before the 2020 compliance deadline. This notice will inform EPA as to which small refineries are using the alternative RIN retirement schedule and will allow EPA to monitor and track the progress of the small refineries towards full compliance with their 2020 RVOs. We are requiring a small refinery to send us a letter signed by the responsible corporate officer expressing their intent to comply using the alternative RIN retirement schedule. We will acknowledge receipt of the small refinery's notification of their intent to comply using the alternative RIN retirement schedule. We did not receive any comments on this aspect of the proposal. Accordingly, we are finalizing as proposed.

Under the alternative RIN retirement schedule, we will still require that participating small refineries submit a 2020 annual compliance report by the 2020 compliance deadline. The 2020 annual compliance report is necessary to establish a small refinery's 2020 RVOs, which will be used by the small refinery to determine minimum RIN retirements for each installment under the alternative RIN retirement schedule, and for EPA to verify that the small refinery is meeting its quarterly RIN retirement obligations. We did not receive any comments on this aspect of the proposal and are finalizing it as proposed.

As a condition to use the alternative RIN retirement schedule, the obligated party that owns/operates the small refinery must, on its annual RFS compliance report, provide the individual-small refinery RVO for the 2020 compliance year (i.e., comply on a refinery-basis for that small refinery). Under the RFS program, obligated parties must either comply with their RVOs on an individual-refinery basis or an aggregated basis (i.e., they combine the RVOs from all of their refineries). If an obligated party owns other refineries with RVOs in addition to the small refinery and complies on an aggregated basis, it would be unclear what portion of the aggregated RVOs apply to only the small refinery and whether the obligated party has met the RIN retirement quotas under the alternative RIN retirement schedule. Therefore, as a condition for a small refinery to use the alternative RIN retirement schedule, the small refinery must

demonstrate compliance on an individual basis so that RINs can be retired for the specific small refinery's RVOs. Similarly, if an obligated party carries forward a RIN deficit from 2019 into 2020, that obligated party would need to comply on an individual-refinery basis for the 2019 compliance year as well. This condition allows EPA to track the small refinery's progress towards compliance with its 2020 obligations more effectively, and will not unduly hinder obligated parties in making their compliance demonstrations. We did not receive any comments on this aspect of the proposal. Accordingly, we are finalizing as proposed.

We are not changing the regulatory provisions governing the use of cellulosic waiver credits (CWCs). The regulations currently state that CWCs "may only be used for an obligated party's current-year cellulosic biofuel RVO and not towards any prior year deficit cellulosic biofuel volume obligations."³² We believe this approach is appropriate because, in recent years, the use of CWCs has decreased as obligated parties have largely been complying with their cellulosic RVO through RIN retirements.³³ Accordingly, small refineries wishing to use CWCs for their 2020 cellulosic biofuel RVO must purchase and use CWCs by the 2020 compliance deadline.³⁴ Additionally, allowing small refineries to use CWCs to meet their cellulosic biofuel RVO through the alternative RIN retirement schedule (i.e., after the 2020 compliance deadline) would introduce logistical challenges for EPA and small refineries that would complicate the implementation of the alternative RIN retirement schedule. Moreover, it is unlikely that modifications to the CWC regulations would provide small refineries with a meaningful benefit in complying with their RFS obligations, when viewed in light of what we have already provided in this alternative RIN retirement schedule. We did not receive any comments on this aspect of the proposal and are finalizing it as proposed.

³² 40 CFR 80.1456(b)(4).

³³ See Table 4: RFS2 RIN Retirements in EMTS Nested by RVO and Table 6: Cellulosic Waiver Credits Purchased Annually at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and>.

³⁴ 40 CFR 80.1456(c)(2).

Under the alternative RIN retirement schedule, a participating small refinery will not be permitted to carry forward a RIN deficit from 2021 or a subsequent year into the following compliance year unless it had fully complied with its 2020 RFS obligations. We are imposing this condition as a prerequisite to carrying forward a future RIN deficit because we want to prevent the scenario in which a small refinery continuously accrues annual RIN deficits, placing it in the position where it is no longer capable of complying with its accrued RFS obligations. The alternative RIN retirement schedule is intended to support small refineries in achieving and maintaining full compliance with their RFS obligations and get them on track for future compliance, not to permit them to indefinitely delay their compliance demonstrations.

Some commenters supported the RIN deficit carry-forward restriction, while several other commenters opposed this limitation as being contrary to EPA's goal of providing meaningful support to small refineries to achieve compliance. The commenters opposing this restriction also asserted that it is contrary to CAA section 211(o)(5)(D) in that it denies small refineries that would be in compliance with the alternative RIN retirement schedule a statutory flexibility that would otherwise be available to them. We disagree that this restriction is contrary to CAA section 211(o)(5)(D). In this instance, EPA is allowing small refineries to carry forward RIN deficits from 2019 into 2020 and satisfy their combined obligations using the alternative RIN retirement schedule. Thus, EPA is not depriving small refineries of that statutory flexibility. However, as the statute requires that such a deficit be satisfied in the next compliance year, and the compliance demonstration for 2020 is prolonged by the alternative RIN retirement schedule, it would be a violation of the statute and regulations to allow additional deficits to be carried forward. Moreover, even if a small refinery chose not to carry forward a 2019 RIN deficit and only used the alternative RIN retirement schedule for its 2020 RVOs, permitting a 2021 deficit to be carried forward before the 2020 obligations have been fully satisfied would only encourage small refineries to again delay their compliance preparation and demonstration, contrary to the goals of the alternative RIN retirement schedule and the RFS program. Additionally, a small

refinery would again be eligible to carry forward a deficit upon full demonstration of its 2020 obligation; thus, it is the decisions of the small refinery itself that determine whether or not they can utilize the statutory and regulatory flexibilities provided by the deficit carry forward provision.

We note that all of the already existing regulatory flexibilities for small refineries—including the ability to satisfy up to 20 percent of their 2019 RVOs using 2018 carryover RINs under 40 CFR 80.1427(a)(5) and the ability to carry forward a RIN deficit from 2019 to 2020 if they did not carry forward a RIN deficit from 2018 under 40 CFR 80.1427(b)—will continue to be available under the alternative RIN retirement schedule. It should also be noted that other current RFS regulations will also remain in effect, including that small refineries that use 2018 RINs to meet up to 20 percent of their 2019 RVOs must do so by the 2019 compliance deadline because 2018 RINs expire after the 2019 compliance deadline and become invalid.³⁵ Similarly, any 2019 RINs that a small refinery uses to satisfy up to 20 percent of its 2020 RVOs must be retired for compliance by the 2020 compliance deadline because 2019 RINs expire after the 2020 annual compliance deadline and become invalid.³⁶

As described above, participating small refineries will still be able to use any valid RINs at the time of retirement under the alternative RIN retirement schedule. We believe that this approach will encourage participating small refineries to retire a maximum number of 2019 RINs for their 2020 RVOs while providing flexibility for small refineries to obtain and retire valid RINs for 2021, 2022, 2023, and 2024 to satisfy their 2020 RVOs.

To help implement the alternative RIN retirement schedule for participating small refineries, we intend to assist parties with procedures for submitting forms that they would use. For example, we plan to leverage existing forms and procedures for the submission of reports and transactions under our e-reporting systems. Due to the limited number of small refineries, we

³⁵ 40 CFR 80.1427(a)(6), 80.1428(c).

³⁶ 40 CFR 80.1427(a)(6).

plan to work individually with participating small refineries. To further help communicate this alternative RIN retirement schedule for small refineries, we also intend to post the deadlines for the alternative RIN retirement schedule on our website.³⁷

Lastly, we received comments from one commenter that were beyond the scope of this rulemaking. This commenter raised issues facing the RFS program as a whole, such as renewable fuel blending challenges relating to the E10 “blendwall,” the imposition of RIN price controls, and the potential environmental impacts of renewable fuel production. While the proposed RIN retirement schedule touched on many challenges small refineries currently face—including the final RFS standards, RIN price controls, and the environmental impacts of renewable fuel production—these matters are beyond the scope of this rulemaking. Many of these issues, moreover, have been addressed in separate proceedings. Therefore, these topics are not further addressed in this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2718.02.

³⁷ Information related to annual compliance and attest engagement reporting is available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/reporting-fuel-programs>.

You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information to be collected is necessary to implement the alternative RIN retirement schedule for small refineries. As part of this rule, a participating small refinery will submit a notification to EPA indicating that the small refinery will use the alternative RIN retirement schedule and maintain records related to the determination and retirement of RINs under the alternative RIN retirement schedule. We estimate that 13 small refineries will use the alternative RIN retirement schedule.

Respondents/affected entities: Small refineries.

Respondent's obligation to respond: Mandatory in order to receive compliance flexibility under § 80.1444.

Estimated number of respondents: 39.³⁸

Frequency of response: Notification letters would typically be a one-time response. Recordkeeping is performed on occasion, and as needed.

Total estimated burden: 19 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,710, all of which is labor costs, and which includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, EPA will announce that approval in the *Federal Register* and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

³⁸ We note that under this alternative RIN retirement schedule, each participating small refinery will have to submit a notification letter, keep records of the submitted notification letter, and keep records of the methods and variables used to determine RIN retirements under the alternative RIN retirement schedule. For purposes of estimating burden associated with reporting and recordkeeping as a result of this rule, we count each small refinery three times. Because we estimate that 13 small refineries will elect to take advantage of the alternative RIN retirement schedule, we estimate that the total number of respondents under this collection will be 39.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This action reduces burden to small refineries by creating an alternative RIN retirement schedule for their 2020 RVOs. As small refineries have no obligation to use the alternative RIN retirement schedule, there is no additional cost to small refineries if they simply comply with the existing regulatory schedule. We do not anticipate that there will be any costs associated with these changes and that the alternative RIN retirement schedule may reduce costs. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments. Requirements for the private sector do not exceed \$100 million in any one year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action only affects RFS obligated parties. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does establish an environmental health or safety standard. This action addresses the 2020 compliance deadline for small refineries only and does not impact the RFS standards themselves.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

V. Statutory Authority

Statutory authority for this action comes from section 211(o) of the Clean Air Act, 42 U.S.C. sections 7545(o).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Penalties, Petroleum, Renewable fuel, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGISTRATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

2. Add §80.1444 to read as follows:

§80.1444 Alternative RIN retirement schedule for small refineries.

(a) *Applicability.* The provisions of this section apply to the following compliance years:

(1) 2020.

(2) [Reserved]

(b) *Eligibility.* Any obligated party that has a refinery that meets the definition of small refinery in §80.1401 for the applicable compliance year in paragraph (a) of this section (hereinafter the “applicable compliance year”) is eligible to use the provisions of this section for each small refinery it operates (hereinafter the “small refinery”).

(c) *Treatment of RVOs.* (1) In lieu of retiring sufficient RINs under §80.1427(a) to demonstrate compliance with the small refinery’s RVOs for the applicable compliance year by the applicable compliance deadline, the obligated party must meet all the requirements of this section and all other applicable requirements of this subpart.

(2) If the obligated party does not meet all of the requirements in this section, the obligated party is subject to the requirements of §80.1427(a).

(d) *Individual facility compliance.* (1) If the obligated party carries a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for both the previous compliance year and the applicable compliance year.

(2) If the obligated party does not carry a deficit into the applicable compliance year from the previous compliance year, the obligated party must comply with its RVOs for each refinery it operates on an individual basis (as specified in §80.1406(c)) for the applicable compliance year.

(e) *Compliance report submission and notification.* The obligated party must do all the following by the annual compliance reporting deadline specified in §80.1451(f)(1)(i) for the applicable compliance year (hereinafter the “applicable compliance deadline”):

(1) Submit an annual compliance report for the small refinery for the applicable compliance year.

(2) Notify EPA in a letter signed by the responsible corporate officer (RCO) or RCO delegate, as specified at 40 CFR 1090.800(d), of its intent to use the provisions of this section for the small refinery.

(f) *Alternative RIN retirement schedule.* The obligated party must retire sufficient RINs to satisfy the minimum percentages of each and every RVO for the applicable compliance year (as determined under §80.1407(a)) according to the following RIN retirement schedule:

(1) For the 2020 compliance year:

Table 1 to paragraph (f)(1) – 2020 Compliance Year RIN Retirement Schedule

| Minimum 2020 RVOs Percentage RIN Retirement | Deadline |
|--|------------------|
| 20% | February 1, 2023 |
| 40% | May 1, 2023 |
| 60% | August 1, 2023 |
| 80% | November 1, 2023 |
| 100% | February 1, 2024 |

(2) [Reserved]

(g) *RIN vintages and retirements.* (1) The obligated party may retire for compliance any valid RINs at the time of retirement towards the small refinery’s RVOs for the applicable compliance year and is exempt from the requirements in §80.1427(a)(6)(i).

(2) The obligated party must not retire for compliance any prior-year RINs for the small refinery's RVOs after the applicable compliance deadline.

(h) *Deficit carry-forward for subsequent compliance years.* The obligated party may not carry forward any deficit under §80.1427(b) for the small refinery for compliance years after the applicable compliance year until it has retired sufficient RINs to satisfy each and every RVO for the applicable compliance year in its entirety.

(i) *Forms and procedures.* The obligated party must submit annual compliance reports and retire RINs under this section using forms and procedures specified by EPA under §§80.1451(j) and 80.1452(d).

3. Amend §80.1454 by adding paragraph (a)(7) to read as follows:

§80.1454 What are the recordkeeping requirements under the RFS program?

(a) * * *

(7) Any obligated party that uses the provisions of §80.1444 for a small refinery must keep the following records:

(i) Copies of any notifications submitted to EPA under §80.1444(e)(2).

(ii) Copies of the methods and variables used to calculate the number of RINs retired for the alternative RIN retirement schedule under §80.1444(f).

* * * * *